

**Legislative Council Panel on Constitutional Affairs**

**The Chief Executive's 2020 Policy Address**

**Policy initiatives of the Constitutional and Mainland Affairs Bureau in relation to electoral arrangements, promotion of the Constitution and the Basic Law, promotion of equal opportunities and elimination of discrimination, etc**

This paper briefs Members on the policy initiatives of the Constitutional and Mainland Affairs Bureau in relation to electoral arrangements, promotion of the Constitution of the People's Republic of China (the Constitution) and the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law), promotion of equal opportunities and elimination of discrimination, etc. A paper on policy initiatives relating to Mainland co-operation and Taiwan affairs has been separately submitted to the Panel on Commerce and Industry for discussion.

**Our vision**

2. The Hong Kong Special Administrative Region (HKSAR) Government will strive to ensure that public elections will continue to be conducted in a fair, open and honest manner. At the same time, we will also safeguard the fundamental rights protected by the Basic Law, as well as actively promote the Constitution and the Basic Law to members of the public.

3. The new initiatives we will pursue and on-going initiatives we will continue to implement are highlighted as follows –

New initiatives

- (a) explore the use of electronic poll registers (EPR) in Hong Kong public elections to verify the identity of electors and distribute ballot papers (i.e. electronic mode of ballot paper distribution), with a view to implementing the relevant measure in the 2021 Legislative Council General Election (LCGE);
- (b) explore the setting up of polling-cum-counting stations in the Mainland to facilitate registered electors to vote in the 2021 LCGE;

- (c) revise and improve the relevant local legislation to better implement the Interpretation of Article 104 of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) (the Interpretation) in November 2016; and
- (d) introduce suitable amendments to the National Flag and National Emblem Ordinance (Instrument 401) in accordance with the provisions, principles and spirit of the amended Law of the People's Republic of China on the National Flag (National Flag Law) and the Law of the People's Republic of China on the National Emblem (National Emblem Law).

On-going initiatives

- (a) work closely with the Electoral Affairs Commission (EAC) to ensure that the 2021 LCGE will be conducted in a fair, open and honest manner in accordance with the relevant legislation;
- (b) taking into account the proposals put forward by the EAC and the views of the community, introduce relevant legislative amendment proposals so as to enhance the electoral system and arrangements;
- (c) proactively promote the Constitution and the Basic Law through the working groups under the Basic Law Promotion Steering Committee (BLPSC) and relevant government bureaux to enable the public to have a more comprehensive and accurate understanding of the Constitution, the Basic Law, and the "one country, two systems" principle;
- (d) take forward the implementation following passage of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 in liaison with the Equal Opportunities Commission (EOC), and continue to examine the EOC's remaining priority recommendations relating to its Discrimination Law Review;

- (e) enhance protection under the Sex Discrimination Ordinance (Cap 480) by prohibiting harassment of breastfeeding women, and support the EOC in stepping up its sexual harassment prevention efforts;
- (f) maintain an overview on the overall implementation of the revised Administrative Guidelines on Promotion of Racial Equality in government bureaux and departments as well as related organisations;
- (g) promote equal opportunities for people of different sexual orientation and transgender persons, with a view to fostering in the community the culture and values of inclusiveness, mutual respect and non-discrimination. Efforts include following up on the strategies and measures recommended by the Advisory Group on Eliminating Discrimination against Sexual Minorities;
- (h) enhance training for the government disciplined services to enhance frontline officers' knowledge of and sensitivity towards sexual minorities. Training materials have been launched and will be suitably incorporated into the regular training courses;
- (i) engage stakeholders to discuss for implementation of feasible anti-discrimination proposals based on the findings of the study on the experience of other countries/regions in implementing measures on anti-discrimination of sexual minorities;
- (j) continue to study concrete legislative amendment proposals for the Personal Data (Privacy) Ordinance (Cap 486) (PDPO) jointly with the Office of the Privacy Commissioner for Personal Data (PCPD) to strengthen protection towards personal data privacy; and
- (k) continue to promote children's rights through the Children's Rights Education Funding Scheme and the Children's Rights Forum.

## **Detailed measures**

### Public elections

4. The LCGE, originally scheduled for 6 September 2020, has been postponed for a year due to the severe COVID-19 epidemic situation. According to the decision made by the NPCSC on 11 August 2020, after 30 September 2020, the sixth-term Legislative Council (LegCo) will continue to discharge its duties for no less than one year until the commencement of the seventh-term LegCo. At the same time, there are views in the community calling for the EAC to change and enhance the existing electoral arrangements.

5. We have reviewed the existing legislation on the regulation of various electoral arrangements, taking into account the proposals put forward by the EAC in its Report on the 2020 LCGE released in October this year and the views of the community. We, along with relevant departments including the Registration and Electoral Office (REO) and Department of Justice, etc., are proactively exploring the feasibility of the recommendations and views, including: (i) the setting up of polling-cum-counting stations in the Mainland to facilitate registered electors to vote in the 2021 LCGE; (ii) the use of EPR in public elections; and (iii) empowering Presiding Officers (PROs) of polling stations to set up a special queue for electors in need in LegCo elections and District Council elections, etc. We will consult the LegCo on proposed legislative amendments after we have formulated practicable options for enhancing the electoral system and arrangements.

6. As regards exploring the setting up of polling-cum-counting stations in the Mainland, at present electors are required to vote in person in public elections in Hong Kong. In other words, electors who are in the Mainland must be in Hong Kong on the polling day in order to cast their votes at the stations allocated to them. Amidst the continuous outbreak of the epidemic, we notice that a large number of electors were stranded in the Mainland under boundary control restrictions, and hence were unable to come back to Hong Kong to cast their votes. There have also been strong calls in the community that the HKSAR Government should make arrangements to facilitate these electors to vote.

7. When considering whether and how to implement voting outside Hong Kong, ensuring that elections are held in an open, fair and honest manner is always the top priority. The HKSAR Government would need to consider various factors in a holistic manner, including: whether

and how to make arrangements for advance registration; how to ensure that ballot papers and ballot boxes can be delivered to and from polling stations effectively and safely; arrangements during the poll and the count; how to apply Hong Kong's electoral laws and regulations to the poll and the count; risks involved during the process and how to deal with emergencies at stations in the Mainland; and how to maintain order in the stations and enforcement actions in relation to breaches of electoral law, etc.

8. In addition, the HKSAR Government has been actively studying ways to electronise different stages of the election throughout the years with a view to enhancing efficiency and accuracy of election procedures on the prerequisite that security and privacy protection would not be compromised. The EAC has agreed to actively explore the use of EPR in public elections. By electronising the process of issuing ballot papers, accuracy of ballot paper issuance could be enhanced, leading to a smoother and more efficient process. To provide the legal basis for this suggestion, we are taking forward the relevant preparatory work, including necessary amendments to the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap 541). Our target is to implement EPR in the LCGE to be held in September 2021.

9. For empowering PROs of polling stations to set up a special queue for electors in need, it can facilitate the electoral staff in maintaining order in polling stations. Hong Kong is a caring society. Caring arrangement should be provided to electors in need so as to ensure that elections are conducted in a fair and just manner.

10. As in the past, we will continue to work closely with the EAC to ensure that the 2021 LCGE will be conducted in a fair, open and honest manner in accordance with the relevant legislation.

#### Voter registration

11. To tie in with the 2021 LCGE, the HKSAR Government will, in line with past practice, encourage eligible persons to register as electors and remind the public of statutory deadlines related to voter registration (VR) through publicity. As with each VR cycle, the REO will continue to implement checking measures and inquiry process to remind the public and registered electors to provide true and accurate information for VR, and to update their registration particulars in good time, with a view to maintaining the accuracy and completeness of VR records.

### Oath-taking by public officers

12. Article 104 of the Basic Law states that, “When assuming office, the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.” The NPCSC endorsed the Interpretation on 7 November 2016, which explains that oath taking is the legal prerequisite and required procedure for public officers specified in Article 104 of the Basic Law to assume office, and must comply with the legal requirements in respect of its form and content. The Interpretation also makes it clear that an oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with law.

13. It is the HKSAR’s constitutional obligation to implement Article 104 of the Basic Law and the Interpretation accurately. In this relation, we will, with reference to relevant local court judgments, rationalise relevant local legislation including the Oaths and Declarations Ordinance (Cap 11) and the Legislative Council Ordinance (Cap 542). Amendments may include: the detailed oath-taking requirements; arrangements relating to the re-taking of oath; oath administrator; and the legal consequences and statutory procedures in case of breaches of the oath. We will complete the review and drafting of the legislation as soon as possible with a view to introducing a bill to the LegCo for consideration.

### National Flag and National Emblem Ordinance

14. On 17 October 2020, the NPCSC endorsed the amendments to the National Flag Law and the National Emblem Law. The amended National Flag Law and the National Emblem Law will be implemented with effect from 1 January 2021.

15. The National Flag Law and the National Emblem Law have been listed in Annex III to the Basic Law and applied locally in the HKSAR by way of legislation through the enactment of the National Flag and National Emblem Ordinance. The HKSAR Government will make suitable amendments to the National Flag and National Emblem Ordinance in accordance with the provisions, principles and spirit of the

amended National Flag Law and the National Emblem Law, with a view to implementing provisions that are applicable to the HKSAR and fulfilling the constitutional responsibility of the HKSAR.

### Promotion of the Constitution and the Basic Law

16. The Constitution and the Basic Law form the constitutional basis of the HKSAR and provide strong safeguard for the long-term prosperity and stability of Hong Kong. The HKSAR Government has the responsibility to enable the general public to have a comprehensive and accurate understanding of the Constitution and the Basic Law, and has been adopting a multi-pronged approach in its promotion and education efforts to enable the public to have a more comprehensive and thorough understanding of the Constitution, the Basic Law and the “one country, two systems” principle via different channels.

17. The year 2020 marks the 30<sup>th</sup> anniversary of the promulgation of the Basic Law. The HKSAR Government has organised a series of special publicity and education programmes, including: staging a webinar on 8 June this year in commemoration of the 30<sup>th</sup> anniversary of the promulgation of the Basic Law; organising thematic online exhibitions and quiz competitions; launching a video series, an Announcement in the Public Interest and TV programmes; and enriching the Basic Law Court Case Database and learning and teaching resources, etc.

18. In addition, the HKSAR Government organised on this year’s Constitution Day (i.e. 4 December) an online seminar with the theme of “The Constitution and National Security”, featuring renowned Mainland and Hong Kong experts and academics to examine the close relationship amongst the Constitution, the Basic Law and safeguarding national security.

19. Furthermore, other year-round promotional efforts have been continuing, including: organising roving exhibitions at the district level; arranging the Basic Law mobile resource centres to pay visits to different districts and schools; harnessing electronic media for promotion; and co-organising with relevant organisations or subsidising community organisations to conduct research or organise activities, including talks, quiz competitions and exhibitions, for the public, with a view to promoting and strengthening the atmosphere of studying and learning the Constitution and the Basic Law in the community and schools.

20. The BLPSC chaired by the Chief Secretary for Administration provides advice and steer on the overall strategy and key aspects for promoting the Constitution and the Basic Law. It also monitors, evaluates and reviews promotional programmes undertaken by government departments and non-governmental organisations. Five working groups (namely Working Groups on Local Community; Teachers and Students; Civil Servants; Industrial, Commercial and Professional Sectors; and Community Outside Hong Kong) are set up under the BLPSC and are assisted by the Home Affairs Bureau, Education Bureau, Civil Service Bureau, Trade and Industry Department, and Information Services Department respectively in planning and organising various types of activities to promote the Constitution and the Basic Law on various fronts.

#### Review of anti-discrimination legislation

21. The Discrimination Legislation (Miscellaneous Amendments) Bill (2018 Bill) was passed by the LegCo on 11 June 2020 and became the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020, enhancing protection from discrimination and harassment under the Sex Discrimination Ordinance, Disability Discrimination Ordinance (Cap 487), Family Status Discrimination Ordinance (Cap 527) and Race Discrimination Ordinance (Cap 602), which includes prohibiting such acts as: discrimination of breastfeeding women; harassment between participants in a common workplace; and disability or racial harassment by customers against service providers, etc. This legislative exercise served to take forward eight of the priority recommendations in the EOC's submissions on its Discrimination Law Review (DLR). We are working with the EOC on implementing the new legal provisions, such as through production of guidelines and information leaflets, publicity via various media channels, and organising training workshops.

22. Consequential to suggestions received in the course of deliberating the 2018 Bill, the HKSAR Government has separately introduced legislative proposal to amend the Sex Discrimination Ordinance, i.e. the Sex Discrimination (Amendment) Bill 2020, to provide protection from harassment of breastfeeding women. This Bill has been introduced to the LegCo for first and second reading at the Council meeting on 9 December 2020. We have also invited the EOC to conduct a study on the areas of protection under the Sex Discrimination Ordinance in order to address further concerns related to sexual harassment.

23. Alongside our efforts to enhance legal protection, we have allocated additional resources to support the EOC in stepping up its work on sexual harassment prevention. In this regard, the EOC has established the Anti-sexual Harassment Unit to enhance its efforts in reviewing legal protection, providing a support platform for victims of sexual harassment, promoting the formulation of anti-sexual harassment policies and measures amongst different sectors, and enhancing public understanding and alertness about sexual harassment through education and publicity campaigns.

24. Upon enactment of the Sex Discrimination (Amendment) Bill 2020, we will tackle the EOC's remaining 19 priority recommendations from its DLR. We will also study in detail the other suggestions raised by Members during the Bills Committee's examination of the 2018 Bill, including discrimination or vilification that may be faced by persons arriving in Hong Kong from the Mainland, as well as whether existing protection from sexual harassment under the Sex Discrimination Ordinance is sufficient. Our current goal is to strive for determination of the way forward for these recommendations within this term of the Government.

#### Promotion of racial equality

25. The HKSAR Government strives to safeguard the equal rights of people of different races. To strengthen support for ethnic minorities, we have refined the Administrative Guidelines on Promotion of Racial Equality (the Guidelines). The revised Guidelines have been implemented since April this year, with the scope of application extended from 23 government bureaux, departments (B/Ds) and other public authorities to all B/Ds and related organisations (collectively referred to as public authorities), making a total of over 100. The purpose of the Guidelines is to raise public authorities' awareness on the need for racial diversity and inclusion as well as equity considerations in the formulation, implementation and review of policies and measures so that all residents, regardless of their race, can enjoy equal access to public services.

26. The revised Guidelines contain two new guidance notes. One is on provision of language services, which sets out the necessary steps the management and frontline staff of public authorities should take to identify the language service needs of service users, introduce the availability of and proactively offer language services, and arrange language services to those in need as appropriate. The other one is on

data collection, which stipulates the requirements for public authorities to review all policy areas, identify policies and measures that people of diverse race may make use of and need access to, and collect data on a regular basis for the purposes of service monitoring and continuous improvement of service provision.

27. We will closely monitor the implementation of the Guidelines to ensure compliance.

#### Eliminating discrimination on grounds of sexual orientation and gender identity

28. The HKSAR Government has all along been striving to promote equal opportunities for people of different sexual orientations and transgenders, with a view to fostering in the community the culture and values of inclusiveness, mutual respect and non-discrimination. Efforts include following up on the strategies and measures listed below.

29. On public education and publicity, we are committed to promoting the culture and values of inclusiveness, mutual respect and non-discrimination, including actively introducing to employers the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation (the Code). As of now, over 360 organisations employing nearly 560 000 employees have adopted the Code. We will continue with our efforts in promotion and education via various channels such as online platforms and seminars.

30. On support services provided to sexual minorities, we subsidise the 24-hour hotline for supporting sexual minorities operated by the Tung Wah Group of Hospitals (TWGHs) to provide prompt support, counselling and referral services to sexual minorities and their families. Since its establishment in January 2018, the hotline received over 9 000 calls as at end-November 2020. The TWGHs has also been regularly organising support groups and programmes for different sexual minorities. So far, more than 80 programmes have been organised. The TWGHs will continue with their publicity work through various channels, including stepping up publicity and interaction with service users via online social media.

31. We had launched training materials to enhance sensitivity of medical and healthcare professionals towards sexual minorities, and organised a briefing session for more than 80 representatives from various professional bodies from the medical and healthcare sector in

2019. We subsequently arranged two train-the-trainer sessions for these professional bodies to facilitate their dissemination of relevant knowledge and practical skills to their members. The HKSAR Government will also enhance training for the government disciplined services. We have launched training materials in November 2020 for the government disciplined services to enhance frontline officers' knowledge of and sensitivity towards sexual minorities and incorporate such materials suitably into the regular training courses. For the next stage, we will prepare training materials for social workers, human resources professionals and teachers.

32. In addition, we are drawing up a charter on non-discrimination of sexual minorities covering provision of goods, facilities and services; provision, disposal and management of premises; employment; and education for voluntary adoption by service providers, with a view to enhancing the acceptance towards sexual minorities. We have also briefed this Panel on the study on the experience of other countries/regions in implementing measures on anti-discrimination of sexual minorities in June this year, and will discuss with stakeholders for implementation of feasible anti-discrimination measures.

#### Protection of personal data

33. The HKSAR Government has consulted this Panel on the directions of amendment of the PDPO earlier, including: establishing a mandatory data breach notification mechanism; strengthening the regulation on data retention period; reviewing penalties of non-compliance with the PDPO by raising criminal fines and exploring the feasibility of introducing direct administrative fine; regulating data processors directly to strengthen protection towards personal data being processed; amending the definition of "personal data" to cover information relating to an "identifiable" natural person; as well as regulating disclosure of personal data of other data subjects.

34. We are studying with the PCPD on concrete legislative amendment proposals, making reference to relevant data protection laws in other jurisdictions and Hong Kong's actual situation, with a view to drafting the amendment bill after consulting stakeholders in due course. Our aim is to endeavour to complete formulation of concrete legislative amendment proposals within next year and to consult this Panel followed by commencing legislative drafting work on the amendment proposal.

### Children's rights

35. While working to safeguard equal enjoyment of basic individual rights for all, we particularly care about the protection of children. In this respect, we continue to administer the Children's Rights Education Funding Scheme. Since its establishment in 2006, the Scheme has supported over 360 projects implemented by non-government bodies, enhancing public understanding of children's rights as provided under the United Nations Convention on the Rights of the Child. We will also continue to provide a platform, through organising the Children's Rights Forum, for exchanging views on matters concerning children's rights amongst relevant non-governmental organisations, children's representatives and the HKSAR Government in order to promote understanding and respect for children's rights in the community. A total of 35 meetings of the Forum has been held since its establishment in 2005.

### **Conclusion**

36. Members are invited to note the content of this paper.

**Constitutional and Mainland Affairs Bureau  
December 2020**